

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Criminal Division—Felony Branch

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[Stamp: SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL DIVISION]

UNITED STATES OF AMERICA

v.

ROBERT CARTER

2012 OCT:25 P 2:59
FILED

Case No. 2010-CF1-20951
Honorable Thomas Motley
Status Hearing:

NOTICE OF FILING

The government requests that the attached discovery letter, dated **October 24, 2012**, be made part of the record in this case.

Respectfully submitted,

RONALD C. MACHEN JR.
United States Attorney

[Signature]

DAVID J. GORMAN
ERIN O. LYONS

Assistant United States Attorneys
United States Attorney's Office for the
District of Columbia
555 Fourth Street, NW
Washington, D.C. 20530
(202) 252-7816

Certificate of Service

I hereby certify that on October 24, 2012, I caused a copy of the Notice of Filing and attached Discovery Letter to be served by electronic mail upon defense counsel Steven Kiersh.

[Signature]

DAVID J. GORMAN
Assistant United States Attorney



U.S. Department of Justice

Ronald C. Machen Jr.
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

October 24, 2012

BY HAND DELIVERY and ELECTRONIC MAIL

Steven R. Kiersh
5335 Wisconsin Avenue, NW
Suite 440
Washington, D.C. 20015
Skiersh@aol.com

Re: *United States v. Robert Carter*
Superior Court Case No. 2010-CF1-20951

Dear Counsel:

I am writing to memorialize the production of additional documents and materials in the above-referenced case. **The items that were recently provided are indicated below in bold.**

I. Plea Offer

At this time, the government is not extending a plea offer to your client. Your client previously rejected the following offer: defendant pleads guilty to one count of First Degree Murder While Armed and two counts of Assault With Intent to Kill While Armed, under 11(e)(1)(C) of the Superior Court Rules of Criminal Procedure, with an agreed-upon sentence of 37 years. If your client is again interested in pleading guilty, please contact me.

II. Discovery

A. Documents and other items that were previously provided to you:

Copies of the following documents were previously given to you:

MCL Evidence Reports PD 668 and PD 698 (17pp)

Draft Sketches (2pp)
Property Record PD 81 (4pp)
Request for Laboratory Examination PD 698A (2pp)
Firearms Certificate (1p)
Fingerprint Processing Work Sheet (1p)
Patient Valuable Envelope (2pp)
Vehicle Processing Sheet (3pp)

Arrest Report PD 163 (2pp)
Incident Report PD 251 (7 pp)
Confirmation identification photographs of defendant (8 photographs, 9pp)
(5) CDs of photos taken by MPD
(1) CD of photos from OCME containing 16 autopsy photos and 45 scene photos

Firearms Report (2 pp)
MPD Form UN-89 - Firearms form
PD 251/252 related to carjacking on 10/29/10 (4 pages)
Paperwork from prior criminal cases
 2010-DVM-1793 (37 pages)
 2009-DVM-535 (43 pages)
 2009-DVM-953 (32 pages)
paperwork relating to P.G. County incident 02/08/2005 (252 pages)

Bode DNA Report of September 18, 2012
Bode DNA Report of September 25, 2012

disc containing 911 calls and Radio Run

In addition, copies of the following were provided to you within the past week:

**Grand Jury testimony of Penny Harrison
Grand Jury testimony of Myrtle Church
Grand Jury transcript of Ulysses Green
DVD interview of Moria Morse
DVD interview of Christopher Morse
DVD interview of Rachelle Morse
DVD interview of Eric Gordon**

B. Evidence

1. Physical Evidence

At trial the government may seek to introduce the physical evidence that is described and referenced in the provided discovery documents and CDs. Should the government seek also to introduce any evidence not described herein, I will notify you in writing.

2. Biological Material

It is possible that some of the evidence described in the discovery provided herewith may contain biological material that could be subjected to DNA testing. Until that evidence is submitted for analysis, it is not possible to tell whether genetic material is present and whether any of it can be identified as belonging to the perpetrator or, under circumstances probative of the perpetrator's identity, can be identified as belonging to the victim.

You may have a pre-trial right to request independent DNA testing on those items of evidence which may contain biological material as defined in D.C. Code Section 22-4131(2) under the following circumstances:

1. Where DNA testing has resulted in the inclusion of the defendant as a source of the biological material or, under circumstances that are probative of the perpetrator's identity, DNA testing has resulted in the inclusion of the victim as the source of the biological material, and there is sufficient biological material to conduct another test; and / or
2. Where the biological material has not been subjected to DNA testing. Please be mindful that, under the statute, the right to request an independent test is triggered only when the material apparently derived from the perpetrator of a crime, or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime.

If you are seeking independent testing of items containing biological material, you should file a motion with the court requesting DNA testing. The motion should identify the specific evidence for which DNA testing is requested and the biological material the DNA examiner should look for. If the court orders the testing, we will make arrangements for the evidence to be transmitted at your expense to the laboratory specified by the court or the defense. The cost of any independent testing must be paid by you or the court. You should be aware that DNA testing takes several weeks or longer and that your client's trial may be delayed by the amount of time necessary to do the analysis and by any other period occasioned by giving up the scheduled trial date. *See* D.C. Code Section 23-1322(h)(1) & (3).

3. Radio Run Information

- ☐ The government believes there are no recorded communications relevant to this case.
- ☒ The government believes there are recorded communications relevant to this case. A disc containing the 911 calls and radio run was already provided to you.

4. Identification Evidence

On October 29, 2010, your client was identified by eight witnesses using confirmatory photographs. As indicated above, copies of the eight photographs, with corresponding redacted

handwritten notes, were previously provided.

5. Inspection

Upon request, you are entitled to inspect and copy or photograph certain books, papers, documents, photographs, tangible objects, buildings or places that are within the possession, custody or control of the government. See Super. Ct. Crim. R. 16(a)(1)(C). If you would like to view any of the evidence listed above or described on the attached police reports, please contact me immediately and we can make arrangements for you, or your certified investigator, to inspect the evidence. These arrangements will include a condition that you not raise any objection to the admissibility of such evidence at trial because of the break in the chain-of-custody occasioned by your inspection.

6. Reports of Examinations or Tests and Experts

The government expects to call the following experts at trial: firearms and medical examiner. More complete expert notice will be provided on a later date.

The government intends to call deputy medical examiner Dr. Lois Goslinoski, who conducted the autopsy in this case. She is expected to be qualified as an expert in forensic pathology. Dr. Goslinoski is expected to testify about forensic pathology generally, the role of the D.C. Medical Examiner's Office, autopsies generally, entrance and exit wounds, characteristics of gunshot wounds, wound tracks and injuries to internal organs. Dr. Goslinoski will specifically testify about conducting the autopsy of Angel Morse and describe the state of Angel's body at the time of her death, as well as the injuries she suffered. Dr. Goslinoski is expected to offer opinion testimony about the manner and cause of death, time of death, the effect of certain injuries on bodily functions, approximate the location of the firearm at the time that the fatal bullet was expelled, and answer hypothetical questions about the position of the body at the time the wounds were inflicted. Dr. Goslinoski will base her conclusions in general and specifically relating to this autopsy on her experience, training, autopsy photographs, autopsy reports and the autopsies themselves. A copy of Dr. Goslinoski's *curriculum vitae* was already provided.

Additionally, the government intends to call Michael Mulderig, the firearms examiner who inspected all of the firearms/ballistics evidence in this case. The firearms report previously provided contains the opinions and conclusions reached by this expert. The basis for these opinions is the expert's own inspection of the items of evidence under a microscope. Mr. Mulderig will testify consistent with the findings expressed in his report (dated November 15, 2010). Specifically, among other things, he will testify to the condition of the AMT .45 caliber pistol (inoperable) and that Items 5, 6, 7, 8, and 10 are .45 caliber cases that were fired from the same firearm. Mr. Mulderig will further testify consistent with the other conclusions and opinions expressed in the firearms report. The expert's *curriculum vitae* was already provided.

Additionally, the government may call Roslyn Sensabaugh, fingerprint examiner, who examined the prints in this case and determined that the following prints were of value

(71,73,76,77,78,79, 83,84,85). Ms Sensabaugh eliminated the decedent from all of the prints of value. As you are aware, Ms. Sensabaugh is employed by the District of Columbia under the new Forensics Laboratory as a fingerprint examiner. **She may testify about print examination and analysis and will provide specific testimony consistent with the above-mentioned information. The expert's *curriculum vitae* was already provided.**

Regarding DNA evidence, the government may call Bode DNA Analysts Brianne Floryan and Brian Adams. Ms. Floryan and Mr. Adams are Forensic Biologists/DNA Analysts at Bode Technology who regularly conduct DNA analysis and serology exams. Ms. Floryan and Mr. Adams are expected to testify concerning DNA in general and the DNA examinations and analysis conducted in this case, as reported in the previously-provided DNA reports (of September 18 and 25, 2012). They will testify concerning serology in general and the serology testing that was conducted relevant to this case, as reported in the previously-provided reports. Mr. Floryan will also testify to finding sperm in/from item 57 and Mr. Adams will testify concerning his further analysis (using the Y-STR method) of item 57. The results of these examinations are contained in the previously-provided reports. **The *curriculum vitae* for each expert was already provided.**

The government may call an engineer from AT&T who will testify as an expert in the field of radio frequency engineering. The government anticipates that the engineer will testify about the technology involved in the use of cellular telephones, including the technology surrounding cellular site towers. The government also anticipates that the engineer will explain the information contained in call detail records. The government anticipates that the engineer's testimony will include testimony regarding the cellular telephone associated with the cellular telephone number 202- [REDACTED] and the various cell towers that the phone was hitting or "pinging off" throughout the Washington, D.C., area on or about October 29, 2010. The engineer's testimony will be based on his/her training, experience, and review of the records for AT&T cellular telephone number 202- [REDACTED]. We will provide the name and contact information for the engineer as soon as we receive it.

C. Other Crimes Evidence

The government may use at trial other crimes evidence, as defined by Drew v. United States, 331 F.2d 85 (D.C. Cir. 1964), and Toliver v. United States, 468 A.2d 958 (D.C. 1983), and their progeny. Such other crimes evidence may include any and all facts and information concerning your clients prior arrests/convictions for the Sexual Assault and Kidnapping in Prince George's County and the three prior misdemeanor domestic violence cases from the District of Columbia.

A formal Notice of Intent to Introduce Evidence of Other Crimes was filed on October 18, 2012.

D. Criminal Record

The defendant's criminal record can be found in the Pretrial Services Report. I will notify you in writing if the government learns of any additional convictions.

E. Government's Discovery Requests

The government hereby makes the following discovery requests:

- notice of documents and tangible objects the defendant expects to introduce pursuant to Super. Ct. Crim. R. 16(b);
- a Jencks request for all prior statements of any defense witness (excluding the defendant) pursuant to Super. Ct. Crim. R. 26.2;
- a Lewis request (for which we request the name, date of birth, sex, and social security number of each defense witness prior to trial); and
- a request for information pertaining to any expert or scientific testimony or evidence pursuant to Rule 16(b)(1)(B) and (C).

Pursuant to Super. Ct. Crim. R. 16(b)(2), we note our continuing request to receive any material pursuant to Rule 16(b) as the case proceeds.

F. Alibi Demand

The government is not making an alibi demand pursuant to Super. Ct. Crim. R. 12.1.

III. Contact Information

If you have any questions about the information provided above, you may contact me by telephone or electronic mail. Please do not use the U.S. Mail for any correspondence with me (including motions), as mail service may take more than three weeks to reach me due to security screening procedures.

Sincerely,

RONALD C. MACHEN JR.
United States Attorney

A handwritten signature in black ink, appearing to read 'D. J. Gorman', is written over a horizontal line.

David J. Gorman

Erin Lyons

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cc: Superior Court Case File (without attachments)